

Court of Appeals, State of Michigan

ORDER

Michelle Gower v James Harkema

Docket No. 257970

LC No. 03-000299-NH

Bill Schuette
Presiding Judge

William C. Whitbeck
Chief Judge

Donald S. Owens
Judge

The Court orders that the motion for peremptory reversal is GRANTED in light of *Ousley v McLaren*, 264 Mich App 486; ___ NW2d ___ (2004). MCR 7.211(C)(4). We reject plaintiff's argument that *Waltz v Wyse*, 469 Mich 675; 609 NW2d 177 (2004), and *Ousley, supra*, held that notice tolling under MCL 600.5856(d) was inapplicable to the five-year provision of the wrongful death saving provision, MCL 600.5852, and, therefore, as plaintiff argues, those cases are not dispositive of the present case which was brought under the two-year provision of the wrongful death saving provision. A reasonable reading of *Waltz* and *Ousley* leads to the conclusion that notice tolling under MCL 600.5856(d) is inapplicable to MCL 600.5852 in its entirety. Indeed, the *Waltz* Court held that the notice tolling statute only applies to statutes of limitation or repose, not to MCL 600.5852, which is a saving provision.

We order this matter REMANDED to the trial court for entry of an order granting summary disposition to defendants George Arthur Williams, M.D., and Associated Retinal Consultants, P.C.

We do not retain jurisdiction



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

MAR 22 2005

Date

Sandra Schultz Mengel
Chief Clerk